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In The

Supreme Court of the United States

October Term, 1973

No. ~~73~~ 1797

Mobley M. Milam,

Petitioner,

VERSUS

United States of America,
Board of Governors of
the Federal Reserve System
and the Federal Reserve Bank
of San Francisco,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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Petitioner, Pro Se

May, 1974

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In The

Supreme Court of the United States

October Term, 1973

NO. _____

Mobley M. Milam,

Petitioner,

VERSUS

United States of America,
Board of Governors of
the Federal Reserve System
and the Federal Reserve Bank
of San Francisco,

Respondents.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

The Petitioner respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit entered in this proceeding on January 29, 1974.

OPINIONS AND JUDGMENTS BELOW

The opinion and judgment of the United States Court of Appeals for the Ninth Circuit appears as Appendix "A" herein. No opinion was rendered by the District Court for the Southern District of California; its order appears as Appendix "B".

JURISDICTION

The judgment of the Court of Appeals for the Ninth Circuit was entered on January 29, 1974. A petition for rehearing was denied on March 5, 1974, (see Appendix "C") and this petition for certiorari is being filed within ninety (90) days of that date. This court's jurisdiction is invoked under Title 28, U.S.C., Section 1254 (1).

QUESTIONS PRESENTED

1. Whether or not the petitioner, in his complaint, stated a claim upon which relief can be granted, i.e. are Federal Reserve Notes to be redeemed in themselves or by money issued directly by the United States Government (coins or U.S. Notes)?

2. Whether or not Federal Reserve Notes are"dollars" within the meaning of the federal statutes and whether or not they are "lawful money" within the meaning of Title 12, U.S.C., Sec. 411 and other provisions of the Federal Reserve Act?

3. Whether or not the United States must fulfill a statutory (12 U.S.C. 411) and contractual obligation made to every holder of Federal Reserve Notes?

STATUTORY PROVISIONS INVOLVED

United States Code, Title 12

Section 411. Issuance to reserve banks; nature of obligation; redemption

Federal reserve notes, to be issued at the discretion of the Board of Governors of the Federal Reserve System for the purpose of making advances to Federal reserve banks through the Federal reserve agents as hereinafter set forth and for no other purpose, are hereby authorized. The said notes shall be obligations of the United States and shall be receivable by all national and member banks and Federal reserve banks and for all taxes, customs and other public dues. They shall be redeemed in lawful money on demand at the Treasury Department of the United States, in the City of Washington, District of Columbia, or at any Federal Reserve Bank.

United States Code, Title 31

Section 452. United States notes.

United States notes shall be lawful money, and a legal tender in payment of all debts, public and private, within the United States, except for duties on imports and interest on the public debt.

Other statutory provisions involved (set forth verbatim in Appendix "D") are the following:

Title 31, United States Code, Section 314
Title 31, United States Code, Section 316
Title 31, United States Code, Section 391
Title 31, United States Code, Section 392
Title 31, United States Code, Section 453
Title 31, United States Code, Section 462
Title 31, United States Code, Section 463
Title 12, United States Code, Section 283
Title 12, United States Code, Section 284
Title 12, United States Code, Section 414

Federal Reserve Act of December 23, 1913; 38 Stat. 251 (pertinent parts of Sec. 16, par. 1, 3, 5 and 6, and Sec. 18, par. 1 and 4 thereof).

Thomas Amendment to the Agricultural Adjustment Act of May 12, 1933, as amended by Public Resolution No. 10 of June 5, 1933.

STATEMENT OF THE CASE

On October 31, 1969, petitioner filed a complaint (see Appendix "E" herein) against theUnited States, The Board of Governors of the Federal Reserve System and the Federal Reserve Bank of San Francisco to redeem a $50.00 Federal Reserve note in lawful money. The complaint alleges that on or about October 27, 1969, petitioner presented the

note (set forth in an exhibit to the complaint) to the Federal Reserve Bank for payment and demanded redemption in lawful money. It further alleges respondents refused to redeem the note in lawful money but instead offered only other Federal Reserve Notes. The complaint prayed for judgment against the United States for $50.00 lawful money and that respondents be specifically required to redeem the note in lawful money.

On December 21, 1971, the District Court granted respondents' motion for summary judgment for failure of the plaintiff to state a claim upon which relief can be granted. The District Court's order was duly appealed by petitioner, briefs were filed and the matter was argued before the United States Court of Appeals, Ninth Circuit, on January 8, 1974. On January 29, 1974, the Court of Appeals entered judgment affirming the District Court, seemingly (per its opinion) on the basis that petitioner was asking for redemption of the note in gold or silver (which is not the case--see petition for rehearing attached hereto as Appendix "F").

REASONS FOR GRANTING THE WRIT

1.

THE COURT OF APPEALS HAS RENDERED AN ERRONEOUS DECISION ON AN IMPORTANT QUESTION OF FEDERAL LAW WHICH HAS NOT BEEN, BUT SHOULD BE SETTLED BY THIS COURT.

This suit is based upon an attempt to redeem a Federal Reserve note. The note, on its face, states in bold type:

> "THE UNITED STATES OF AMERICA WILL PAY TO THE BEARER ON DEMAND FIFTY DOLLARS " (Emphasis Added).

In much smaller print, it also states:

> "This note is legal tender for all debts, public and private, and is redeemable in lawful money at the United States Treasury or at any Federal Reserve Bank", (Emphasis Added).

The United States Code section covering such transactions is Title 12, U.S.C., Sec. 411 (originally the first paragraph of Sec. 16 of the Federal Reserve Act; December 23, 1913, Ch. 6, Sec. 16, 38 Stat. 265). That section set forth in full supra reads in pertinent part as follows:

> "The said notes (Federal Reserve Notes) shall be obligations of the United States and shall be receivable by all national and member banks and Federal Reserve banks and for all taxes, customs, and other public dues. They shall be redeemed in lawful money on demand at the Treasury Department of the United States, in the city of Washington, District of Columbia, or at any Federal Reserve

bank", (Emphasis and parenthetical material added).

The statute is clear--Federal Reserve notes are obligations of the United States, and they shall be redeemed in lawful money. Applying the "plain meaning" rule, which is deeply imbedded in our jurisprudence, we cannot escape the conclusion that Federal Reserve Notes are not lawful money. To hold otherwise would mean that, under this statute, such notes are redeemable in themselves. This is patently illogical, contrary to the plain meaning of ordinary English and, in fact, ludicrous (like making green stamps "redeemable" only in other green stamps.)

What, then, is "lawful money", as set forth in the statute and on the face of the note? Just by examining the note, it would seem logical to believe that the redemption inscribed thereon refers to "dollars", for the note says:

> "THE UNITED STATES OF AMERICA WILL PAY TO THE BEARER ON DEMAND FIFTY DOLLARS". (Emphasis Added).

The "dollar" has, throughout our history, been defined by statute as so many grains of silver or gold and until recently, nothing else. It was still so defined at the time this suit was filed (Title 31, U.S.C., Sections 314 and 316). Since then 31 U.S.C. 316 was repealed by Act of December 31, 1970, 84 Stat. 1769 (31 U.S.C. 391) which provides for a "dollar"

of copper and nickel. Gold remains the "unit of value" under 31 U.S.C. 314.

The statutory coined dollar of first silver and then gold, sometimes both and finally copper and nickel has always been "lawful money", and, at least until the issuance of "Lincoln Greenbacks" during the Civil War, was the only "dollar" recognized as "lawful money". 1/

It is by Act of Congress that "greenbacks" (United States notes as distinguished from Federal Reserve notes and other bank notes) are made "lawful money" (Title 31, U.S.C. Section 452). Nowhere in our codes are Federal Reserve notes defined as "lawful money". The only things made "lawful money" by statutes are notes issued by the United States itself (U.S. notes and demand Treasury notes--See Title 31, U.S.C., Sections 452 and 453). Federal Reserve notes are not issued by the United States Government through government decision, but are issued by the

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1/ See Chief Justice Chases' statement relative to "greenbacks" in THE PEOPLE OF THE STATE OF NEW YORK, ex rel. THE BANK OF NEW YORK v. THE BOARD OF SUPERVISORS OF THE COUNTY OF NEW YORK (1869) 74 U.S. 26 (7 Wall 26) at p. 30 thereof, 19 Law. Ed. 60 at p. 62 (AKA BANK v. SUPERVISORS):

Board of Governors of the Federal Reserve System in their discretion (See 12 U.S.C. 411 set forth in full supra).

The Federal Reserve System is comprised of Federal Reserve Banks which are privately-owned corporations in which the United States Government owns no stock (12 U.S.C. 283 and 284).

Consequently, it should be crystal-clear why Congress has never seen fit to designate any bank notes or Federal Reserve notes "lawful money". That term has been reserved exclusively in our statutes to notes issued directly by the government itself.

In analysing what is "lawful money" under the Federal Reserve Act, we must be careful

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1/ (Continued)

"But, on the other hand, it is equally clear that these notes are obligations of the United States. Their name imports obligation. Every one of them expresses upon its face an engagement of the nation to pay to the bearer, a certain sum. The dollar note is an engagement to pay a dollar, and the dollar intended is the coined dollar of the United States; a certain quantity in weight and fineness of gold or silver authenticated as such by the stamp of the government. No other dollars had before been recognized by the legislation of the National Government as lawful money," (Emphasis Added).

to distinguish the term in its generic, as opposed to its specific sense, the sense with which we are here concerned as is shown infra.

Two distinct legal qualities of money in American practice are described by the same words, "lawful money". One is a broad and general quality describing all money properly issued by appropriate legal authority. Money is lawful in this sense because it has a legal sanction in contradistinction to unlawful money, confederate money, bank notes illegally issued, privately-issued coins, etc. A more technical or specific sense to the term "lawful money" has also developed in America. It describes the kind of money which may properly be used as reserves against notes or deposits of banking institutions, or in redeeming other kinds of money. This technical meaning of the words "lawful money" appears to have evolved from the use of the term in state and federal legislation regulating the monetary and banking system.[2/]

2/ The Legal Qualities of Money (1956) p. 157, by Arthur Kemp, Professor of Money and Credit, Claremont College. As Professor Kemp points out at p. 67 of his book, "The origin of the term lawful money appears to center upon its use to describe gold and silver coin. Lawful money, meaning gold and silver, gradually came to be used in state laws designating the kind of asset which could be used legally as a reserve against notes issued by banks chartered by the States".

As early as 1756, bills of credit issued by Rhode Island Colony were made payable in silver or its equivalent in gold. By popular usage, they were called "lawful money bills" to indicate the type of money in which they were to be redeemed.[3]

The words "lawful money" also appeared in many state banking laws from 1837 to 1862 to indicate the kind of money to be used for redeeming bank notes.[4]

Bearing this history in mind, the words "lawful money" in the Act of February 25, 1862, creating "greenbacks" take on a more concrete meaning. The act declared "greenbacks" to be lawful money and a legal tender." (Emphasis Added).[5]

3/ Henry Bronson, A Historical Account of Connecticut Currency, Continental Currency and the Finances of the Revolution, (New Haven Historical Society, New Haven, 1865) p. 4

4/ Laws of Virginia (1836-1837), Chap. 82, Sec. 3.
Cobb's General Laws of Georgia (1851), Art I., Sec. 55
Laws of New York (1838), 61st Sess. Chap. 260.
Swan's Statutes of Ohio (1840), Chap. 15, Sec. 10.
Louisiana Laws (1841-1842), Art. 22, Sec. 2.
Connecticut Proceedings of the Assembly (1848) Chap. IVII, Sec. 12.

As Professor Kemp points out, "Mr. Elbridge G. Spaulding, who originally introduced the bill authorizing the United States notes into the House of Representatives, was a successful banker of Western New York. It is logical to assume that Spaulding was aware of the meaning of the lawful money provisions of state laws (particularly that of New York), and that the designation "lawful money" in the law of 1862 was intended to make the United States notes legal for use as reserves against the notes and deposits of banks organized under state banking laws".[6] The words "lawful money" are used several places in the Federal Reserve Act, but always in their technical sense, i.e., the kind of money which may properly be used as reserves against notes or deposits, or in redeeming other kinds of money.[7]

4/ (Continued)
Revised Statutes of the State of Indiana (1852), Chap. 10, Sec. 33.
Laws of Missouri (1856-1857), Art. I, Section 37.
Revised Statutes of the State of Maine, (1857), Chap. 47, Sec. 22.
General Statutes of the State of Massachusetts (1860), Chap. 57, Sec. 19.
Pennsylvania Laws (1860), No. 376, Sec. 31,

5/ 31 U.S.C. 452, 12 Stat. at Large 345.

6/ Kemp, op., cit. p. 88.

7/ See Fed. Reserve Act of Dec. 23, 1913, 38 Stat. 251, particularly Sec. 16, Par. 1, 3, 5 and 6, and Sec. 18, Par. 1 and 4 (Exhibit D).

Nowhere are the words "lawful money" used in the act to describe money in the generic sense or as legal tender. In fact, "legal tender" is a different concept altogether from "lawful money".[8] It means that kind of money which can be validly offered in payment of a debt. Whereas, as we have seen, "lawful money" historically and in our statutes has to do with reserves, redemption, and money issued directly by our government.[9]

8/ For this reason the famous Thomas Amendment to the Agricultural Adjustment Act of May 12, 1933, as amended by Public Resolution No. 10 of June 5, 1933 (31 U.S.C. 462, now 392, and 31 U.S.C. 463) making all monies legal tender and interchangeable does not apply here; furthermore, currency obligations of and to the United States (which is what is involved here) are specifically exempted by the Act (31 U.S.C. 463 (b).

9/ In a text, "The Federal Reserve System" edited by Herbert V. Prochnow, Vice-President, the First National Bank of Chicago, there is quoted in a discussion on legal reserve requirements the following:

> "Before the 1917 amendment, whatever portion of its required reserves each bank carried in its own vault had to be gold or other lawful money; consequently, it drew a material distinction between lawful money (gold, gold certificates, silver certificates, Treasury notes of 1890, greenbacks, and silver coin) which could be counted as reserve and

Thus, it is clear that "lawful money" as used in Title 12, U.S.C., Sec. 411, the section with which we are specifically concerned in this suit, does not refer to "legal tender" or to money in the generic sense, but rather to the specific kind of money with which Federal Reserve notes are to be redeemed. That, as we have seen, consists of U.S. coin and U.S. notes or demand Treasury notes which are specifically designated by Congressional enactment (31 U.S.C. 452, 453) as "lawful money".

Furthermore, there is ample case authority, though not directly concerned with Federal Reserve notes, for this concept and definition of "lawful money".10/

9/ (Continued)
other forms of money (national bank notes and Federal Reserve notes) which could not be counted as reserve; and in practice, it requested shipments only of lawful money and shipped to the Federal Reserve Bank or paid out over its counter those forms which could not be counted as legal reserve. The effect was that lawful money (particularly gold and gold certificate) tended to concentrate in the members' vaults and to be circulated to the exclusion of national banknotes and Federal Reserve notes". (Ray B. Westerfield, Money, Credit, Banking, New York, The Ronald Press Company, 1938, pp. 609-611), (Emphasis Added).

10/ Pryor v. The Commonwealth of

Thus, petitioner has stated a claim upon which relief can be granted (i.e. redemption of his Federal Reserve Note in U.S. coin, U.S. Notes or Demand Treasury notes), and the lower courts committed error in holding otherwise.

However, not only is the Ninth Circuit decision erroneous, but this case involves important questions of federal law which have not heretofore been ruled upon by this Court, to-wit:

> Are Federal Reserve Notes "dollars"?
>
> Are Federal Reserve Notes to be redeemed in themselves or by money issued directly by the government?
>
> Is our government or a private institution going to control the issuance of "lawful money"?

These questions go to the very foundations of our government and society. They involve our basic problems of inflation, the public debt, and loss of our freedom and property to large financial institutions. They come duly

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10/ (Continued)
Kentucky, 32 (2 Dana) Ky. 298 (1836)
Garner v. State, 13 Tenn. 160 (1833)
Hamilton v. State, 60 Ind. 193 (1877)
Raine v. State, 226 S.W. 189; 143 Tenn. 168 (1920)
State v. Neilon, 43 Ore. 168, 73 Pac. 321 (1903)

before this Court, and they have not heretofore been ruled upon. They should be.

II

THE ISSUES AT STAKE HERE INVOLVE NOT ONLY $50.00 OF THE PETITIONER, BUT A STATUTORY AND CONTRACTUAL OBLIGATION OF THE UNITED STATES TO EVERY HOLDER OF FEDERAL RESERVE NOTES AND BILLIONS OF DOLLARS TO THE TAXPAYERS.

In order to realize what is at stake here, one must understand how Federal Reserve Notes are created in contradistinction to United States Notes. The creation of Federal Reserve Notes is esoteric to most, but actually is simple. To illustrate (and remember, Federal Reserve Notes under 12 U.S.C. Sec. 411 are issued in the discretion of the Board of Governors of the Federal Reserve System which is comprised of Federal Reserve Banks which are privately-owned corporations): Suppose the government needs two billion dollars for some emergency purpose but does not have the funds from tax receipts or from the sale of government bonds to individuals. The government then turns to a Federal Reserve Bank and asks for a two billion dollar loan. The Federal Reserve Bank agrees and requests the government to issue bonds to evidence this loan. The bank takes the bonds and opens a two billion dollar checking account for Uncle Sam. Then the bank turns around and requests the United States Treasury to print for the bank two billion dollars in

Federal Reserve Notes, giving the Treasury the two billion in bonds as collateral for the notes. These notes only cost the bank around a penny a piece (the cost to the government for printing); so now the bank has two billion dollars at a cost of a "few cents" and gets eighty million dollars ($80,000,000.00) in interest per year on the bonds (assuming a 4% interest rate)....ABRAHAM LINCOLN saw through this and when he needed money to fight the Civil War, he had "greenbacks" issued directly by the government rather than through banks with interest-bearing bonds.

Is it any wonder we have such a huge public debt and pay billions yearly in interest thereon? This can be stopped if the Federal Reserve is forced to comply with the law and to redeem its notes in lawful money, i.e., United States notes on which there are no interest charges. Instead, the Federal Reserve openly flaunts the law, and not only in this instance, for when the system was set up, it was designed so that the Federal Reserve Banks would have to pay interest on their outstanding Federal Reserve notes to encourage their cancellation. (see 12 U.S.C. Sec. 414, which provides for the Board to set the rate of interest on notes not backed by gold certificates). To date, the Board has never set a rate of interest and, consequently, the outstanding Federal Reserve notes (and our national debt on which they are issued) grow and grow and grow while the "red seal" notes issued directly by our government disappear.

Our government has through the Federal Reserve Act created a monetary structure based on private credit and has given its solemn obligation to redeem this credit money (Federal Reserve Notes) in lawful money. Having done so the people, through their statutory right of redemption, certainly have the right to choose that type of money (money issued directly by the government) which does not involve huge interest payments of billions of dollars to private institutions and parties.

The erroneous decision of the Court of Appeals raises the following questions:

> Are clearly worded statutory obligations of the government to be rendered meaningless?
>
> Are solemn promises made by the government and boldly inscribed on promissory notes which have been for over sixty (60) years circulated to every man, woman, and child in this country who has ever handled money, to become mere wisps in the wind?[11/]

11/ The government's promise inscribed in bold face type on the notes has only recently (1963) been removed by bureaucratic fiat, but the statute creating that obligation has not been changed and billions of the old notes are still in circulation. This contractual obligation of the government cannot be broken under the Constitution of the United States (Perry v. United States, 294 U.S. 330, 351 (1935); Lynch v. United States, 292, U.S. 571 (1934)

What is to become of our Country and our government if such is the case?

These questions should be heard and discussed by this Court. In fact these types of questions are the raison d'etra for the very existence of this Court.

Not only is every person in the United States involved in this case, but countless foreigners who hold Federal Reserve Notes as well. Furthermore, as pointed out above, billions of dollars and the foundations of our monetary system and society are at stake.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment of the Ninth Circuit Court of Appeals.

Respectfully submitted,

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Petitioner, Pro Se

May, 1974

APPENDIX

APPENDIX A
DO NOT PUBLISH

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MOBLEY M. MILAM,
Appellant,

vs.

UNITED STATES OF AMERICA, BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, and the FEDERAL RESERVE BANK OF SAN FRANCISCO,
Appellees.

No. 72-1666

MEMORANDUM

[January 29, 1974]

APPEAL FROM THE UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA

Before: KILKENNY and TRASK, Circuit Judges, and CRAIG* District Judge.

Appellant has filed a substantial brief and an adequate reply brief and has argued his full share of allotted time in support of a demand that his $50.00 Federal Reserve Bank Note be redeemed in "lawful money" of the United States, which

* The Honorable Walter E. Craig, Chief Judge, United States District Court, District of Arizona, sitting by designation.

he says, in effect,must be gold or silver. Appellant refused appellees' tender of an equivalent value in Federal Reserve Notes.

Appellant's contentions, in our view, were put at rest close to a century ago in Julliard v. Greenman, 110 U.S. 421,448 (1884),in which it was said:

"...Under the power to borrow money on the credit of the United States, and to issue circulating notes for the money borrowed, its power to define the quality and force of those notes as currency is as broad as the like power over a metallic currency under the power to coin money and to regulate the value thereof. Under the two powers, taken together, Congress is authorized to establish a national currency, either in coin or in paper, and to make that currency lawful money for all purposes, as regards the national government or private individuals..." [Emphasis supplied]

The power so precisely described in Julliard has been delegated to the Federal Reserve System under the provisions of 12 U.S.C. § 411. Appellant's challenge to the validity of the legislation is meritless Cf. 31 U.S.C. § 392.

While we agree that golden eagles, double eagles and silver dollars were lovely to look at and delightful to hold, we must at the same time recognize that time marches on, and that even the time honored silver dollar is no longer available in its last bastion of defense, the brilliant casinos of the houses of chance in the state of Nevada. Appellant is entitled to redeem his note, but not in precious metal. Simply stated, we find his contentions frivolous.

JUDGMENT AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MOBLEY M. MILAM, Appellant,
v.
UNITED STATES OF AMERICA, BOARD OF COVERNORS OF THE FEDERAL RESERVE BANK OF SAN FRANCISCO, Appellees.

No. 72-1666
(D.C. # 69-323)

APPEAL from the United States District Court for the Southern District of California.

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court of the Southern District of California, and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is affirmed.

A true Copy attest March 13, 1974
EMIL E.MELFI,JR., CHIEF DEPUTY AND ACTING
by: Ray Hewitt Deputy

Filed and entered January 29, 1974

APPENDIX B

Clerk's Stamp
Filed Dec.22,1971

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MOBLEY M. MILAM, Plaintiff, vs. UNITED STATES OF AMERICA et al., Defendants.	Civil No. 69-323-CW ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

This Court having reviewed plaintiff's and defendants' motions for summary judgment and having considered the points and authorities of both sides, and being fully advised in the premises, hereby

GRANTS defendants' motion for summary judgment for the failure of the plaintiff to state a claim upon which relief can be granted.

Findings of Fact and Conclusions of Law as required under Local Rule 3 are hereby waived. See F.R.C.P. 52(a).

Dated: December 21, 1971

/s/ J. CLIFFORD WALLACE
J. Clifford Wallace
United States District Judge

Copies to on
following page

APPENDIX C

Docketed Filed Mar.5, 1974 Clerk U.S.Court of Appeals

UNITED STATES COURT OF APPEALS
NINTH CIRCUIT

MOBLEY M. MILAM,
Appellant,
v.
UNITED STATES OF AMERICA, BOARD OF COVERNORS OF THE FEDERAL RESERVE SYSTEM, and the FEDERAL RESERVE BANK OF SAN FRANCISCO,
Appellees.

No. 72-1666
DC# 69-323(JCW)

Appeal from the United States District Court, Southern District of California.

ORDER

Before: KILKENNY and TRASK, Circuit Judges and Craig, District Judge.*

The petition of appellant for rehearing in the above entitled cause is DENIED.

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* The Honorable Walter E. Craig, Chief Judge, United States District Court, District of Arizona, sitting by designation.

APPENDIX D

TITLE 12, U.S.C.

§ 283. Public subscription to capital stock.

No individual, copartnership, or corporation other than a member bank of its district shall be permitted to subscribe for or to hold at any time more than $25,000 par value of stock in any Federal reserve bank. Such stock shall be known as public stock and may be transferred on books of the Federal reserve bank by the chairman of the board of directors of such bank. Dec. 23, 1913, c.6 § 2, 38 Stat. 251.

§284. Stock allotted to United States

Stock of Federal reserve bank allotted to the United States shall be held by the Secretary of the Treasury and disposed of for the benefit of the United States in such manner, at such times, and at such price, not less than par, as the Secretary of the Treasury shall determine. Dec. 23, 1913, c.6, § 2,38 Stat. 251.

Historical Note

Section as Obsolete. In a communication from the Board of Governors of the Federal Reserve System dated March 7,1941, it was stated "As originally enacted the Federal Reserve Act provided for a Reserve Bank Organization Committee to have charge of the initial steps in organizing the Federal System and this Committee was authorized to allot Federal Reserve Bank stock to the United States in the event that subscriptions to such

stock by banks and by the public were inadequate. However, subscriptions by member banks were adequate and there was no necessity or authority for the allocation of any stock to the United States. Accordingly, [this section] is now of no practical effect and may be regarded as obsolete."

TITLE 12, U.S.C.

§ 414. Authority of Board of Governors respecting issuance of notes; interest; lien.

The Board of Governors of the Federal Reserve System shall have the right, acting through the Federal Reserve agent, to grant in whole or in part, or to reject entirely the application of any Federal Reserve bank for Federal Reserve notes;but to the extent that such application may be granted the Board of Governors of the Federal Reserve System shall, through its local Federal Reserve agent, supply Federal Reserve notes to the banks so applying, and such bank shall be charged with the amount of the notes issued to it and shall pay such rate of interest as may be established by the Board of Governors of the Federal Reserve System on only that amount of such notes which equals the total amount of its outstanding Federal Reserve notes less the amount of gold certificates held by the Federal Reserve agent as collateral security. Federal Reserve notes issued to any such bank shall, upon delivery, together with such notes of such Federal Reserve bank as may be issued under section 441-444

and 446-448 of this title upon security of United States 2 per centum Government bonds, become a first and paramount lien on all the assets of such bank.

TITLE 31, U.S.C.

§ 314. Standard Unit of value

The dollar of gold nine-tenths fine consisting of the weight determined under the provisions of section 821 of this title shall be the standard unit of value, and all forms of money issued or coined by the United States, shall be maintained at a parity of value with this standard, and it shall be the duty of the Secretary of Treasury to maintain such parity.

TITLE 31, U.S.C.

§ 316. Silver coins; weight (Repealed)

The silver coins of the United States shall be a dollar; a half-dollar, or fifty cent piece; a quarter-dollar, or twenty-five-cent piece; and a dime, or ten-cent piece. The weight of said coins shall be that determined by the President under the provisions of section 821 of this title. (Repealed)

TITLE 31, U.S.C.

CLAD COINAGE[NEW]

§ 391. Minting and issuance of clad coins; denomination and specifications; limitation on minting of dollar pieces

(a) The Secretary may mint and issue coins of the denomination set forth in subsection (c) of this section in such quantities as he determines to be necessary to meet national needs.

(b) Any coin minted under authority of subsection (a) of this section shall be a clad coin. The cladding shall be an alloy of 75 per centum copper and 25 per centum nickel, and shall weigh not less than 30 per centum of the weight of the whole coin. The core shall be copper.

(c) (1) The dollar shall be 1.500 inches in diameter and weigh 22.68 grams.

(2) The half dollar shall be 1.205 inches in diameter and weigh 11.34 grams.

(3) The quarter dollar shall be 0.955 inch in diameter and weigh 5.67 grams.

(4) The dime shall be 0.705 inch in diameter and weigh 2.268 grams.

(d) Notwithstanding the foregoing, the Secretary is authorized to mint and issue not more than one hundred and fifty million one-dollar pieces which shall have -

(1) a diameter of 1.500 inches;

(2) a cladding of an alloy of eight hundred parts of silver and two hundred parts of copper;and

(3) a core of an alloy of silver and copper such that the whole coin weighs 24.592 grams and contains 9.837 grams of silver and 14.755 grams of copper.

TITLE 31, U.S.C.

§ 453 Treasury notes

Demand Treasury notes authorized the Act of July 17, 1861, chapter 5, 12 Stat. 259, and the Act of February 12, 1862, chapter 20, 12 Stat. 338, shall be lawful money and a legal tender in like manner as United States notes. Treasury notes issued under the Act of July 14, 1890,

chapter 708, 26 Stat. 289, shall be a legal tender in payment of all debts, public and private, except where otherwise expressly stipulated in the contract, and shall be receivable for customs, taxes, and all public dues.

TITLE 31, U.S.C.

§ 462. Coin and currencies

All coins and currencies of the United States (including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations) heretofore or hereafter coined or issued, shall be legal tender for all debts, public and private, public charges, taxes, duties, and dues, except that gold coins, when below the standard weight and limit of tolerance provided by law for the single piece, shall be legal tender only at valuation in proportion to their actual weight. May 12, 1933, c.25, Title III, § 43(b) (1), 48 Stat. 52; June 5, 1933, c.48 §2,48 Stat. 113.

§ 462. Repealed. Pub.L. 89-81 Title II § 210, July 23, 1965 79 Stat. 257.

§ 392 Legal tender

All coins and currencies of the United States (including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations), regardless of when coined or issued, shall be legal tender for all debts, public and private, public charges, taxes, duties, and dues. Pub.L. 89-81 Title I § 102, July 23, 1965, 79 Stat. 255.

§ 463. Provisions for payment of obligations in gold prohibited; uniformity in value of coins and currencies

(a) Every provision contained in or made with respect to any obligation which purports to give the obligee a right to require payment in gold or a particular kind of coin or currency, or in an amount in money of the United States measured thereby, is declared to be against public policy; and no such provision shall be contained in or made with respect to any obligation hereafter incurred. Every obligation, heretofore or hereafter incurred, whether or not any such provision is contained therein or made with respect thereto, shall be discharged upon payment, dollar for dollar, in any coin or currency which at the time of payment is legal tender for public and private debts. Any such provision contained in any law autorizing obligations to be issued by or under authority of the United States, is repealed, but the repeal of any such provision shall not invalidate any other provision or authority contained in such law.

(b) As used in this section, the term "obligation" means an obligation (including every obligation of and to the United States, excepting currency) payable in money of the United States; and the term "coin or currency" means coin or currency of the United States, including Federal Reserve notes and circulating notes of Federal Reserve banks and national banking associations. June 5, 1933, c. 48 § 1, 48 Stat. 113.

FEDERAL RESERVE ACT OF DEC. 23, 1913;
38 Stat. 251 § 16, par.1 (38 Stat.265)

"Federal reserve notes,...shall be redeemed in gold on demand at the Treasury Department of the United States, in the city of Washington, District of Columbia, or in gold or lawful money at any Federal reserve bank."

Sec.16, par.3 (38 Stat. 266.)

"Every Federal reserve bank shall maintain reserves in gold or lawful money of not less than thirty-five per centum against its deposits and reserves in gold of not less than forty per centum against its Federal reserve notes in actual circulation, and not offset by gold or lawful money deposited with the Federal reserve agent..."

Sec. 16, par.5 & 6 (38 Stat. 267)

"Any Federal reserve bank may at any time reduce its liability for outstanding Federal reserve notes by depositing, with the Federal agent, its Federal reserve notes, gold, gold certificates, or lawful money of the United States. Federal reserve notes so deposited shall not be reissued, except upon compliance with the conditions of an original issue.

The Federal reserve agent shall hold such gold, gold certificates, or lawful money available exclusively for exchange for the outstanding Federal reserve notes when offered by the reserve bank of which he is a director. Upon the request of the Secretary of the Treasury the Federal Reserve Board shall require the Federal

reserve agent to transmit so much of said gold to the Treasury of the United States as may be required for the exclusive purpose of the redemption of such notes."

Sec. 18, par. 1 & 4 (38 Stat. 268-269)

"After two years from the passage of this Act, and at any time during a period of twenty years thereafter, any member bank desiring to retire the whole or any part of its circulating notes, may file with the Treasurer of the United States an application to sell for its account, at par and accrued interest, United States bonds securing circulation to be retired."...

"Upon notice from the Treasurer of the amount of bonds so sold for its account, each member bank shall duly assign and transfer, in writing, such bonds to the Federal reserve bank purchasing the same, and such Federal reserve bank shall, thereupon, deposit lawful money with the Treasurer of the United States for the purchase price of such bonds, and the Treasurer shall pay to the member bank selling such bonds any balance due after deducting a sufficient sum to redeem its outstanding notes secured by such bonds, which notes shall be canceled and permanently retired when redeemed."

APPENDIX E

Clerk's Stamp:
Filed Oct.31,1969

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

MOBLEY M. MILAM, Plaintiff, vs. UNITED STATES OF AMERICA, BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, and the FEDERAL RESERVE BANK OF SAN FRANCISCO, Defendants.	No. 69-323-K COMPLAINT

I

The action arises under the Federal Reserve Act of December 23, 1913, 28 Stat. 265, U.S.C., Title 12, section 411, and under the Act of October 5, 1962, 76 Stat. 744, U.S.C., Title 28, section 1361 as hereinafter more fully appears.

II

Plaintiff now is, and for more than three (3) years has been a resident and citizen of the County of San Diego, State of California, within the Southern District of California and within the territorial jurisdiction of this Court.

III

Defendants issued and placed in circulation a Federal Reserve Note in words

and figures as set forth in Exhibit "A", attached hereto and incorporated herein as though fully set forth, whereby defendant, UNITED STATES OF AMERICA, promised to pay the bearer Fifty Dollars ($50.00) in lawful money on demand.

IV

On or about October 27, 1969, plaintiff was the bearer of said note, and at the FEDERAL RESERVE BANK OF SAN FRANCISCO at Los Angeles, California, plaintiff presented said note for payment and demanded that said note be redeemed in Fifty Dollars ($50.00) lawful money.

V

Defendants refused to redeem said note in lawful money and instead offered only other Federal Reserve Notes which were rejected by plaintiff.

VI

Defendant UNITED STATES OF AMERICA owes to plaintiff, Fifty Dollars ($50.00) in lawful money.

VII

Defendants refuse to redeem said note in lawful money.

WHEREFORE, plaintiff demands

(1) Judgment against defendant UNITED STATES OF AMERICA for the sum of Fifty Dollars ($50.00) in lawful money, interest, and costs; and

(2) That defendants be specifically required to redeem the note aforesaid mentioned in lawful money.

October 29, 1969.

/s/ MOBLEY M. MILAM

MOBLEY M. MILAM, in Pro Per
2845 Nimitz Blvd. Suite B
San Diego, CA 92106
222 1176

Federal Reserve Note

50 50

This Note Is Legal Tender
For All Debts, Public And
Private, And Is Redeemable L10209672 A
In Lawful Money At the United 12
States Treasury, Or At Any
Federal Reserve Bank.

12
Federal Reserve
Bank of
L FIFTY
San Francisco Seal
California

Picture of
GRANT here

L10209672 A 12
12 Q 23

/s/ Kathryn O'Shay Granahn
Treasurer of United States

Series 1950 E
/s/ Henry H. Fowler
Secretary of the Tresurer

The
United States of America
Will Pay To The Bearer On Demand
FIFTY DOLLARS

50 50

EXHIBIT "A"

APPENDIX F

No. 72-1666

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MOBLEY M. MILAM,

Plaintiff-Appellant,

vs.

UNITED STATES OF AMERICA, BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, and the FEDERAL RESERVE BANK OF SAN FRANCISCO,

Defendants-Appellees.

PETITION FOR REHEARING

TO THE HONORABLE JUDGES KILKENNY, TRASK, AND CRAIG WHO HEARD THE APPEAL IN THE ABOVE MATTER:

Appellant Mobley M. Milam respectfully petitions for a rehearing in the above case, and states below in support thereof, with particularity, the points of law and fact which in the opinion of this appellant, the Court has failed to rule on and has overlooked or misapprehended.

I

THE COURT MISAPPREHENDED THE CONTENTIONS OF APPELLANT

The Court in its memorandum opinion states at page 1 thereof that appellant demands that "his $50.00 Federal Reserve Bank Note be redeemed in 'lawful money' of the United States, which he says in effect, must be gold or silver," and at Page 2, "appellant is entitled to redeem his note, but not in precious metal."

The Court has misunderstood appellant's contentions. Nowhere, either in his brief or his oral argument did appellant contend that his note must be redeemed in precious metal (gold or silver). Appellant's whole written and oral argument was to the contrary, i.e. that his note was redeemable in United States notes or demand Treasury notes which are by statute lawful money (31 U.S.C. 452 and 453), see page 10-11, the conclusion of APPELLANT'S OPENING BRIEF, and page 1 and page 6, line 9, of APPELLANT'S REPLY BRIEF.

II

THE COURT OVERLOOKED THE DISTINCTION BETWEEN U.S. NOTES AND FEDERAL RESERVE NOTES

Nowhere does the Court in its memorandum opinion mention United States notes. Yet appellant's whole argument, both written and oral, was to the effect that

United States Notes are lawful money while Federal Reserve Notes are not.

United States Notes, for example two dollar bills and other red seal notes, are issued directly by the United States and are denominated lawful money by statute (31 U.S.C. 452). Federal Reserve Notes are obligations of the United States but are issued by the Federal Reserve System, a private institution owned by the member banks, and are not denominated lawful money (12 U.S.C. 411). The distinction is of tremendous importance, for we the people, the government of the United States, pay interest on the Federal Reserve Notes while we do not do so on the United States Notes.

III

THE COURT MISAPPREHENDED THE CONTENTIONS OF APPELLANT IN REGARD TO THE FEDERAL RESERVE SYSTEM

At page 2 of its memorandum opinion, the Court, citing the JULLIARD case, says that appellant's challenge to the validity of the legislation creating Federal Reserve Notes is meritless. As pointed out at page 6 of the APPELLANT'S REPLY BRIEF:

> "Plaintiff is not disputing such authority in this action. To the contrary, by demanding payment in United States Notes, plaintiff is in effect affirming that power."

IV

THE COURT OVERLOOKED THE DISTINCTION BETWEEN LAWFUL MONEY AND LEGAL TENDER

The Court at page 2 of its memorandum opinion emphasizes through italics that portion of Julliard v. Greenman, 110 U.S. 421, 448 (1884) which says that Congress can "establish a national currency... in paper and make that currency lawful money..." Congress has and did at the time of Julliard establish a national currency consisting of U.S. Notes which it has by statute (31 U.S.C. 452) made lawful money. Even if Federal Reserve Notes are considered a national currency (which is doubtful since they are not issued by the government) Congress has not seen fit to make them lawful money, but rather only legal tender to be redeemed in lawful money (12 U.S.C. 411 and 31 U.S.C. 392).

The distinction between lawful money and legal tender was covered extensively in appellant's brief (e.g. see page 5 - 9 OPENING BRIEF and page 2 REPLY BRIEF) Essentially that distinction is that legal tender means the kind of money which can validly be offered in payment of debt, whereas lawful money, historically and in our statutes, refers to the kind of money issued directly by our government which can be used as reserves for redemption.

V

APPELLANT'S CONTENTIONS ARE IMPORTANT AND SERIOUS AND DESERVE MORE CONSIDERATION THAN MERELY A CURT DISMISSAL AS FRIVOLOUS

Evidently because the Court misunderstood appellant's contentions as merely demanding $50.00 in gold or silver, and could see no gain or loss to appellant, it found them frivolous. This suit is not for a few pieces of gold or silver, but rather to force the government and the Federal Reserve System to follow the law, i.e. to redeem Federal Reserve Notes in lawful money. Contrary to what may appear at first glance, this suit is important. It goes to the very foundations of our government and society. It strikes at the root cause of our basis problems of inflation, the public debts, and loss of our freedom.

The Court at the oral argument of this case, asked appellant what his "interest" was, evidently meaning what he personally had to gain or lose. Appellant supposes this question was geared to some theory of standing or that with no monetary and personal loss the matter was frivolous. Of course, this case did not come on appeal on the question of standing; rather the sole issue was whether or not a cause of action was stated for which relief can be granted. It was, for the government and Federal Reserve Bank is obligated to the bearer (appellant) both on the note and in the statute to redeem the note in lawful money (i.e. U.S. Notes) which it

can do.

Nevertheless, in answer to the Court, it should be pointed out that, like the government, appellant where directly concerned and regardless of personal loss, has a right not to be defrauded out of compliance with the laws of this land (see attached government jury instruction - - Appendix A -- which has been given in thousands of jury cases in this district throughout the years.)

CONCLUSION

In view of the misapprehensions of the Court pointed out above and the issues overlooked, it is respectfully submitted that a rehearing should be granted.

Respectfully submitted,

/s/ MOBLEY M. MILAM
MOBLEY M. MILAM
In Propia Persona

APPENDIX A

COURT'S INSTRUCTION NO.
GOVERNMENT'S PROPOSED INSTRUCTION NO.

To have an "intent to defraud the United States," it is not necessary that a defendant intend to defraud the United States of a thing of value. One has an intent to defraud the United States if he intends to defraud it out of compliance with its customs laws by bringing something into this country contrary to law.